

**The Bay Institute of San Francisco
California League of Conservation Voters
California Sportfishing Protection Alliance
Clean Water Action
Environmental Defense Fund
Friends of the River
League of Women Voters of California
Natural Heritage Institute
Natural Resources Defense Council
Pacific Coast Federation of Fishermen's Associations
Santa Clara Valley Audubon Society
Save San Francisco Bay Association
United Anglers of California**

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August 27, 1997

Douglas Wheeler, Secretary
California Resources Agency
Co-Chair, CALFED Policy Group

Robert Perciasepe, Assistant Administrator for Water
U.S. Environmental Protection Agency
Co-Chair, CALFED Policy Group

RE: BAY-DELTA ACCORD EXTENSION

Dear Mr. Wheeler and Mr. Perciasepe,

It is our understanding that the state and federal governments are presently engaged in discussions regarding a one-year extension of the December 15, 1994 Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government (Bay-Delta Accord). There has been a great deal of confusion and misrepresentation regarding, first, which provisions of the Accord are subject to extension (since, as you know, water quality standards and operational constraints were subsequently codified in state and federal rulemaking, and do not expire on December 15, 1997) and, second, the implications of the Accord for the use of the 800,000 acre-feet of environmental water mandated by the Central Valley Project Improvement Act (CVPIA).

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As signatories to and/or supporters of the Bay-Delta Accord, we continue to support implementation of the Accord as it is written. However, recent attempts to misrepresent the terms of the Accord in an effort to limit other fish protection measures in the Delta prompt us to request that the state and federal governments reaffirm their commitment to the Accord as it is written, prior to any extension of those of its formal terms that expire on December 15, 1997, primarily the ESA flexibility and institutional agreements provisions.

Specifically, we ask the state and federal governments to reaffirm in writing prior to any extension of the Accord the following:

- That the no net loss provision of the Accord applies only to compliance with the take provisions of the federal Endangered Species Act (ESA) (Accord, p. 3, ESA flexibility, section 1), to additional listings under the federal ESA (p. 5, section 2.b), and to the execution of voluntary actions recommended by the CALFED Operations Group (Attachment A). Compliance with existing statutory or regulatory requirements (such as provisions of the CVPIA) does not constitute a voluntary action, and therefore is not subject to the no net loss provision.
- That the exercise of operational flexibility to achieve no net loss under the ESA flexibility provisions of the Accord (p. 3, ESA flexibility, section 1) applies only to adjustment of export limits, and may not be applied to other operational constraints, including water quality standards. Operations to exercise flexibility and achieve no net loss that involve relaxation of constraints other than export limits are not authorized by the Accord.
- That, other than crediting all Central Valley Project water used to implement Bay-Delta standards against the CVP's obligation under Section 3406(b)2 of the CVPIA, the Accord places no constraints on use of the 800,000 acre-feet of environmental water.

In addition, we request that the state and federal governments address in writing the following issues regarding continued implementation of the Accord:

- The CVP crediting provision of the Accord (p. 6, section 3) presumes an equitable apportionment of responsibility for meeting Bay-Delta standards between the CVP and the State Water Project. The state and federal governments should clarify the terms of that apportionment prior to any extension of the Accord.
- The Accord contains a narrative criterion for doubling of chinook salmon production on the Sacramento and San Joaquin Rivers, subsequently adopted

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by the State Water Resources Control Board (SWRCB) in its 1995 Bay-Delta Water Quality Control Plan. We are not aware of any efforts by the State of California through the SWRCB water rights proceedings or otherwise to implement this component of the final Plan. The state should clarify how it intends to implement this component of the final Plan, including long-term cooperation with implementation of the doubling provisions of the CVPIA, prior to any extension of the Accord.

- Since the signing of the Accord, the State of California has conferred candidate species status (for listing under the California ESA) on the Sacramento River spring-run chinook salmon. Federal and state water project operations have been identified among other factors as contributing to the serious decline in spring-run populations. The state and federal governments should clarify how extension of the Accord would be integrated with the state's obligation to protect this species during the candidacy period.

There is now substantial dispute over the fundamental meaning of certain terms and provisions in the Accord. For this reason, it is our belief that extension of the Accord without the written reaffirmation of its meaning by the state and federal governments would be a mistake. It is also our belief that the state and federal governments should clarify their positions on the additional issues we have raised. Until such reaffirmation and clarification have occurred, the state and federal governments should not extend the Accord.

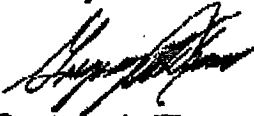
We would be happy to meet with you and your staffs to discuss this most serious issue.

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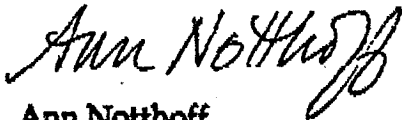
Sincerely,



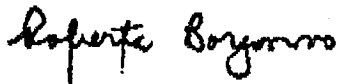
Gary Bobker
The Bay Institute of San Francisco



Gregory A. Thomas
Natural Heritage Institute



Ann Notthoff
Natural Resources Defense Council



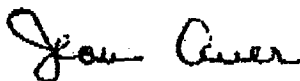
Roberta Borgonovo
League of Women Voters
of California



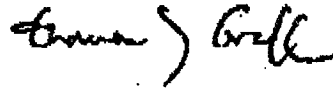
Richard Izmirian
California Sportfishing Protection
Alliance



Marguerite Young
Clean Water Action



Jean Auer



Thomas J. Graff
Environmental Defense Fund



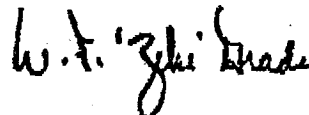
Cynthia L. Koehler
Save San Francisco Bay Association



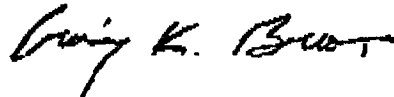
John Beuttler
United Anglers of California



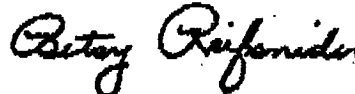
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Craig K. Breon
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Betsy Reifsnider
Friends of the River